

Vol
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United States
Circuit Court of Appeals

For the Ninth Circuit. /

EDNA SMART SHERMAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

JUN 16 1934

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

E. D. TURNER, Jr., Esq.,

A. E. JAMES, Esq.

For Comm'r.:

E. A. TONJES, Esq.

Docket No. 65593

EDNA SMART SHERMAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DOCKET ENTRIES.

1932

May 4—Petition received and filed. Taxpayer notified. Fee paid.

“ 5—Copy of petition served on General Counsel.

Jun. 7—Answer filed by General Counsel.

Aug. 10—Copy of answer served on taxpayer. Circuit Calendar.

1933

Jul. 13—Hearing set for week of Sept. 25, 1933, San Francisco, California.

Sep. 29—Hearing had before Mr. Lansdon, Div. 8. Called 9/25/33—heard 9/29/33 on merits. Stipulation of facts filed. Briefs due Nov. 20, 1933.

1933

Oct. 18—Transcript of hearing of Sept. 29, 1933 filed.

Nov. 20—Brief filed by taxpayer.

“ 20—Brief filed by General Counsel.

Dec. 21—Opinion rendered, Mr. Lansdon, Div. 8. Decision will be entered for the respondent.

“ 28—Decision entered, Mr. Lansdon, Div. 8.

1934

Mar. 24—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

“ 28—Proof of service filed.

May 7—Notice of the appearance of A. E. James as counsel for taxpayer filed.

“ 9—Praecipe filed.

“ 9—Proof of service of praecipe filed.

“ 9—Agreed statement of evidence lodged.

“ 10—Agreed statement of evidence approved and ordered filed. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

Before the United States Board of Tax Appeals
Docket No. 65593

EDNA SMART SHERMAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency N. P.-2-28, dated March 7th, 1932, and as a basis for her proceeding alleges as follows:

I.

The petitioner, EDNA SMART SHERMAN, is an individual residing at 285 Jayne Street, Oakland, California.

II.

The Notice of Deficiency, a copy of which (together with the Revenue Auditor's Report made a part thereof) is attached hereto, marked Exhibit "A" and made a part hereof as if herein fully set forth, was mailed to the petitioner on the 7th day of March, 1932.

III.

The taxes in controversy are income taxes for the year 1929 and for approximately \$7,243.90. [2]

IV.

The determination of tax set forth in said Notice of Deficiency is based upon the following errors:

(a) That the Commissioner erred in determining the income of the petitioner for the year 1929 from the Leander S. Sherman Trust;

(b) That the Commissioner erred in determining that one-half of the salary of the husband of the petitioner, Frederic R. Sherman, is taxable to the petitioner.

V.

The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(A) With reference to the error hereinabove in subdivision (a) of paragraph IV set forth, petitioner alleges:

(1) On or about the first day of September, 1921, Leander S. Sherman and Katie Sherman, his wife, did make, execute and deliver to Leander S. Sherman, Katie Sherman, Phillip T. Clay and Frederic R. Sherman, as Trustees, a conveyance and declaration of trust, and did at said time convey, set over and transfer to said Trustees the property referred to in said declaration of trust, a copy of which is attached hereto, marked Exhibit "B", and made a part hereof as if herein fully set forth;

(2) That under and pursuant to the terms of said declaration of trust the income thereof, after the payment of any and all expenses in con- [3] nection with the administration of the trust, and after the death of Leander S. Sherman and Katie Sherman, his wife, is payable as follows:

1. \$150.00 per month to Flora M. Sherman;
2. \$150.00 per month to Filena T. Hyde;
3. The residue in equal shares to Elsie Sherman Alco and Frederic R. Sherman.

That on or about the 11th day of February, 1927, Frederic R. Sherman transferred, conveyed, set over and assigned to Edna Smart Sherman, your petitioner, one-half of all of his right, title and interest in and to said trust; that a copy of said assignment is attached hereto, marked Exhibit "C", and made a part hereof as if herein fully set out;

(3) That prior to the 1st day of January, 1929, Leander S. Sherman and Katie Sherman, his wife, did die, and at all times during the calendar year 1929 Flora M. Sherman, Filena T. Hyde, Elsie Sherman Alco, Frederic R. Sherman and Edna Smart Sherman were living and, as hereinabove set forth, were entitled under and pursuant to the terms of the aforesaid declaration of trust to share in the income of said trust, after deducting any expenses incurred by the Trustees thereof in connection with the administration of said trust, in the manner following, to-wit:

1. Flora M. Sherman, \$150.00 per month;
2. Filena T. Hyde, \$150.00 per month;
3. The remainder of said income as follows:
 - (a) To Elsie Sherman Alco, one-half;
 - (b) To Frederic R. Sherman, one-quarter;
 - (c) To Edna Smart Sherman, the petitioner, one-quarter. [4]

(4) That the income of said trust for the year 1929 was as follows:

Interest	\$ 99.73
Dividends	\$54,088.00
	<hr/>
Total	\$54,187.73

That the expenditures of said income of said trust were as follows:

To Jane Porter McCann	\$ 5,000.00
Sundry expense	\$ 13.30
	<hr/>
Total	\$ 5,013.30

(5) That the income of said trust distributable to the beneficiaries thereof, under and pursuant to the aforesaid indenture of trust, for the year 1929 was and is \$49,174.43; that your petitioner's distributable share of said sum and the amount actually distributed to said petitioner was and is \$11,393.61; that the Commissioner of Internal Revenue did determine, as set forth in said Notice of Deficiency attached hereto and marked Exhibit "A", that the said taxable share of said trust to your petitioner was the sum of \$12,643.60;

(6) That the sum of \$5,000.00 paid to Jane Porter McCann was in partial settlement of a claim made by said Jane Porter McCann in an action filed in the Superior Court of the State of California, in and for the City and County of San Francisco, seeking to obtain a portion of the trust property.

(B) With reference to the error hereinabove in subdivision (b) of paragraph IV set forth, the petitioner alleges:

(1) That petitioner and Frederic R. Sherman are, and at all times during the taxable year 1929 [5] were, husband and wife; that each of them resided in the State of California during said year; that on or about the 12th day of May, 1926, petitioner and said Frederic R. Sherman did separate and thereupon by instruments dated May 12, 1926 and February 11, 1927, respectively, did make and enter into a separation agreement, wherein and whereby they did define and determine their rights and interest in and to all of the property of the husband, Frederic R. Sherman, both community and separate; that it was the intention of the petitioner and said Frederic R. Sherman, by said agreement, to terminate the community interest of the petitioner in and to any part of the earnings of said Frederic R. Sherman which he might thereafter have; that petitioner and said Frederic R. Sherman have lived separate and apart ever since said 12th day of May, 1926; that other than the sum of \$3,000.00 petitioner received no moneys or other property of any character or description from said Frederic R. Sherman during the taxable year 1929; that copies of the aforesaid agreements dated May 12, 1926 and February 11, 1927, respectively, are attached hereto and marked Exhibits "D" and "E", respectively, and made a part hereof as if herein fully set forth.

WHEREFORE, your petitioner prays that this Board may hear the proceedings and determine:

(a) That the income of said Leander S. Sherman Trust for the year 1929 taxable to

your petitioner is the sum distributed to her, to-wit, the sum of \$11,393.61, instead of the sum of \$12,643.60 fixed by the Commissioner of Internal Revenue as the share of said income taxable to your petitioner; and

(b) That no part of the earnings of said Frederic [6] R. Sherman for the year 1929 is taxable to your petitioner.

EDNA SMART SHERMAN

Petitioner.

State of California,
City and County of San Francisco.—ss.

EDNA SMART SHERMAN, being first duly sworn, deposes and says:

That she is the petitioner above named; that she has read said petition and is familiar with the statements contained therein and that the facts stated are true, except as to those facts stated on information and belief and as to those facts she believes them to be true.

EDNA SMART SHERMAN

Subscribed and sworn to before me this 30th day of April, 1932.

[Seal]

VIOLET NEUNBURG

Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires December 31, 1934 [7]

EXHIBIT "A"

NP-2-28

TREASURY DEPARTMENT

Washington

March 7, 1932

Office of

COMMISSIONER OF INTERNAL

REVENUE

Mrs. Edna Smart Sherman,
285 Jayne Street,
Oakland, California.

Madam:

You are advised that the determination of your tax liability for the year(s) 1929 discloses a deficiency of \$7,243.90, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P:-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of

interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
 DAVID BURNET,
 Commissioner.
 By J. C. WILMER,
 Deputy Commissioner.

Enclosures:

Statement
 Form 882
 Form 870 [8]

(Exhibit "A")

STATEMENT

IT:AR:E-1
 AAT-60D

In re: Mrs. Edna Smart Sherman,
 285 Jayne Street,
 Oakland, California.

Tax Liability

Year	Tax Liability	Tax Assessed	Deficiency
1929	\$8,136.20	\$892.30	\$7,243.90

The deficiency shown herein is based upon the report dated October 15, 1931 prepared by Revenue Auditor F. M. Ford and transmitted to you under date of February 2, 1932, which report is made a part of this letter.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1929, the Income Tax Unit will be unable to afford you an opportunity to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency. [9]

(Exhibit "A")

TREASURY DEPARTMENT

Internal Revenue Service

461 Market Street

San Francisco, California

Office of

INTERNAL REVENUE

AGENT IN CHARGE

In re: Income Tax

Date of report: Feb. 2, 1932

Recommendation:

Years	Additional Tax	Overassess- ment	Penalties
1929	\$7,243.90		
	Total		

Edna Smart Sherman

285 Jayne Street

Oakland, California

The recommendations which this office proposes to make with respect to your income tax liability as the result of a recent examination by an internal

revenue agent are shown in the statement attached.

If you acquiesce in the proposed tax liability the inclosed Form 870 should be executed and forwarded to this office. Your consent on Form 870 to the prompt assessment of any deficiency indicated will stop the running of interest to be assessed on such deficiency under the provisions of section 283(d) of the Revenue Act of 1926 or section 292 of the Revenue Act of 1928, upon a date not later than thirty days after the filing of Form 870 properly executed. Unless such consent is filed the interest to be assessed under the law upon any deficiency indicated runs to the date the deficiency is assessed and the assessment may be made only as provided by section 274(a) of the Revenue Act of 1926 and/or Section 272(a) of the Revenue Act of 1928.

Should you desire to make immediate payment without awaiting formal assessment and notice and demand, you should communicate with the collector of internal revenue at Custom House, San Francisco, inclosing this letter, or a copy thereof. If payment is so made the interest period will terminate on the date of payment.

If you do not acquiesce in the proposed recommendations you should file a protest in writing with this office. Any protest so filed will be given careful consideration, and, if you so desire, you will be given an opportunity for a hearing before the recommendations are forwarded to Washington.

Arrangements will be made by this office upon your request [101] to answer any questions which

may occur to you in your review of these recommendations.

In any event please sign the inclosed form acknowledging receipt of this letter and related papers and return such form to this office.

Respectfully,

B. W. WILDE, JR.,

Internal Revenue Agent in Charge.

Inclosures:

Statement of adjustments

Form 870

Form of acknowledgment. [11]

(Exhibit "A")

Name Edna Smart Sherman

STATEMENT OF TOTAL TAX LIABILITY

Year	Tax Previously Assessed	Adjustments Proposed in Accompanying Report		Correct Tax Liability
		Deficiency	Overassessment	
1929	\$892.30	\$7,243.90		\$8,136.20

NOTE

The amount shown in the first column of the above statement is the amount assessed on the original return except as indicated in the following summary of adjustments previously made:

Year 19

Original tax
Deficiency assessed,....., 19.....,
or	
Overassessment scheduled....., 19.....,
Net tax previously assessed

Year 19

[12]

(Exhibit "A")

—2—

Edna Smart Sherman

F. M. Ford

Examining Officer

Table of Contents

Form 886-T Statement of total tax liability.

Preliminary Statement.

Schedule I Block adjustments.

I (a) Explanation of changes.

II Computation of tax.

III Earned income credit.

Exhibit A Analysis of profit on sales of Borden
Stock.

Preliminary Statement

The deficiency is the result of three major adjustments the transfer of one half of the husband's salary from his return as community income in accordance with I. T. 3859, based on the Malcolm Decision of the U. S. Supreme Court, the inclusion of profit on the redemption of Dairy Dale "A" stock, and the revision of profit reported on the sale of Borden stock received in exchange for Dairy

Dale "B" stock. These adjustments are partly offset by the elimination for normal tax of dividends received through the trust, and by allowance of exemption to the taxpayer as the head of a household.

Earned income credit has been computed in accordance with I. T. 3879, following the McLarry Decision of the U. S. Circuit Court of Appeals.

The changes have been discussed with the taxpayer and her attorney Mr. Turner, of Sloss and Turner. The changes in profits on securities are conceded but it is expected that the inclusion of one half of the husband's salary will be protested. [13]

(Exhibit "A")

—3—

Name Edna Smart Sherman
Schedule No. I
BLOCK ADJUSTMENTS

	Return	Additions to income	Deductions From income	Corrected
1 Salary community	— (1)	11,250.00		11,250.00
2				
3 Interest	762.39			762.38
Interest on bonds				
4 tax-free covenant	1,602.50			1,602.50
5				
Leander S. Sherman				
6 Trust	12,425.00 (2)	218.60 (4)	12,643.60	
7				
8 Profit on sales	2,262.08		(3) 1,576.75	685.33
8a Capital gain		(3) 51,631.70		51,631.70
9 Dividends	11,924.38 (4)	12,643.60		24,567.98
10				
11 Misc.	300.00			300.00
				90,799.90
12 Total income	29,276.35			92,049.90
13 Interest paid	347.21			347.21
14 Taxes paid	428.58			428.58
15				
16				
17 Contributions	399.00			399.00
18 Other deductions	1,398.75 (5)	1,250.00		148.75
Total deductions	2,573.54			1,323.54
Net income	26,702.81	76,993.90	14,220.35	89,476.36
TOTAL INCOME				

Wife's net gain or loss \$.....

Husband's net income or loss \$

Edna Smart Sherman

SCHEDULE I(a)

Explanation of Changes

(1) Salary —

One half of the salary of the husband, Frederic Royal Sherman has been transferred as community income to the return of his wife, in accordance with I.T. 3857, based on the Malcolm Decision of the U. S. Supreme Court.

The relevant court decisions hold that under the California statutes separation of husband and wife does not offset the status of community property. Even during the pending of an interlocutory decree of divorce the parties are still husband and wife, and if one dies, the survivor has the same rights as if no interlocutory decree had been issued. (Estate of Seiler, 164 Cal. 181, 128 Pac. 334 and Olson vs. Superior Court, 175 Cal. 250, 165 Pac. 706).

In the case of Brown v. Brown, 170 Cal. 1, 147 Pac. 1168, it was said—"As we have seen, the marriage status remains until the final decree."

Reason by analogy, it is deemed that a separation of husband and wife, without property agreements, does not affect the liability of the wife for taxation on one half of her husband's earned income subsequent to 7/29/27.

Salary received by (Frederic Royal Sherman in 1929		22,500.00
Taxable		
Frederick Royal Sherman	11,250.00	
Edna Smart Sherman	11,250.00	
(2) Fiduciary income		
Total distributable income—		
Form 1041		49,174.43
Add—unallowable deduction on line (15) (compromise settlement charge- able against corpus)		5,000.00
		<hr/>
Corrected income		54,174.43
Less specific requests		3,600.00
		<hr/>
		50,574.43
Distributable interests		
25% Frederick Royal Sherman	12,643.60	
25% Edna Smart Sherman	12,643.60	

(Exhibit "A")

—5—

Edna Smart Sherman

SCHEDULE I(a)

Explanation of Changes

- (3) Schedule D—(Capital net gain on securities held over two years) The Dairy Dale "A" and "B" stock was acquired on June 30, 1927.

Exchange for Borden was affected August 1, 1929.

Total profit on sales of securities	52,317.03
Less profit on Borden and Dairy Dale A	51,631.70

Remainder—Schedule C	\$ 685.33
----------------------	-----------

Capital gain—Schedule D	51,631.70
-------------------------	-----------

Tax at 12½%	6,453.96
-------------	----------

Profit on Borden and Dairy Dale has been computed in Exhibit A.

- (4) Dividends

Income from trust	12,643.61
-------------------	-----------

Dividends

25% of

54,088.00	13,522.00
-----------	-----------

Other increase

25% of

86.40	21.60
-------	-------

13,543.60

Less specific be-

quest ¼

(3600)	900.00
--------	--------

(Dividends) 12,643.60

- (5) The payment to John and Jane McCann in settlement of claim against the trust estate is deemed to be chargeable against the corpus of the estate rather than against the income of the beneficiaries. [16]

—6—

Name of Taxpayer Edna Smart Sherman
Year)

Schedule No. II Period) ended 1929

COMPUTATION OF TAX

Net income (from Schedule I)		\$89,476.36	
Less: Net loss (section 117 of 1928 Act) Capital net gain	\$51,631.70	51,631.70	
			<hr/>
Income subject to surtax		\$37,844.66	
Less: Dividends	\$24,567.98		
Interest on Liberty Bonds, etc.			
Personal exemption and credit for dependents	3,900.00	28,476.98	
			<hr/>
Balance subject to normal tax		\$ 9,367.68	
			<hr/> <hr/>
Normal tax at 1/2 on \$ 4,000	20.00		
Normal tax at 2 on \$ 4,000	80.00		
Normal tax at 4 on \$ 1,367.68	54.70		
Surtax on \$37,844.66	1,584.47		
Tax at 12 1/2% on capital net gain of \$51,631.70	6,453.96	8,193.13	
			<hr/> <hr/>

Fiscal year income from part-
nerships, etc.:

Normal tax at on \$

Normal tax at on \$

Normal tax at on \$

Surtax on \$

Total tax

\$ 8,193.13

Less: Credit for earned net
income (from Schedule
III)

\$ 24.88

Income tax paid at source 32.05

Taxes paid to a foreign
country

56.93

Total tax assessable

\$ 8,136.20

Tax previously assessed

892.30

Additional tax to be assessed

\$ 7,243.90

[17]

—7—

Name of taxpayer Edna Smart Sherman
 Schedule No. III
 COMPUTATION OF EARNED INCOME
 CREDIT—1924 AND SUBSEQUENT
 YEARS

Year)

Period) ended 1929

INCOME TAX

Earned net income (not over \$10,000 for 1924, \$20,000 for 1925, 1926 and 1927, or \$30,000 thereafter)	\$11,250.00
Less personal exemption and credit for dependents	3,900.00
Balance	<u>\$ 7,350.00</u>
Normal tax at $1\frac{1}{2}\%$ on \$ 4,000	\$20.00
Normal tax at 2% on \$3,350.00	67.00
Normal tax at $\dots\%$ on \$.....
Surtax on \$11,250.00	12.50
Total tax	<u><u>\$ 99.50</u></u>
Credit of 25 per cent (not over 25 per cent of normal tax on net income for 1924, or not over 25 per cent of nor- mal tax on net income plus 25 per cent of surtax on earned net income for 1925 and subsequent years	\$ 24.88

[18]

—8—

Edna Smart Sherman

EXHIBIT A

Borden Co. Sales

Dairy Dale (received in exchange for
Dairy Delivery)

		Cost	Cost
1927 "A"	729.00		4,241.85
"B"	7,604.17	22,123.81	
1928 sold	1,250.00	3,636.75	
	<hr/>	<hr/>	
Balances	729.00 "A"		4,241.85
1/1/29	6,354.17 "B"	18,487.06	

Exchanged 8/1/29 for Borden on the basis of $3\frac{3}{4}$ shares Dairy Dale "B" for one share Borden, and with all Dairy Dale A redeemed at 30.00 a share.

Sales	Sale price	Profit
729 shares Dairy Dale A at \$30	\$21,870.00	
Cost	4,241.85	
	<hr/>	
Profit on redemption		17,628.15

Borden—

110 shares	10,228.75
200 "	19,348.00
100 "	8,900.00
	<hr/>
	38,476.75

Cost—1 sh. Dairy			
Dale “B”	2.9094		
“ 1 sh. Bordens			
3 ³ / ₄ Dairy			
Dale “B”	10.91025		
Cost 410 shares Borden			
at 70.91025		4,473.20	34,003.55
			<hr/>
Total profit on sales			51,631.70
of Borden and Dairy			
Dale “A”			
Profit reported Borden			
110 shares	328.75		
200 shares	1,348.00		
100 shares	(100.00)		
	<hr/>		
	1,576.75		
Corrected	51,631.70		
	<hr/>		
Increase		50,054.93	
Total profit reported		2,262.08	
		<hr/>	
Corrected profit from sales		52,317.03	

EXHIBIT "B"

CONVEYANCE AND DECLARATION
OF TRUST

We, LEANDER S. SHERMAN and KATIE SHERMAN, his wife, of the City and County of San Francisco, State of California, do hereby convey, assign, transfer and set over unto FREDERIC R. SHERMAN, PHILLIP T. CLAY, KATIE SHERMAN and LEANDER S. SHERMAN, all of the capital stock of the Sherman Investment Company, a corporation, owned by us, or either of us, in trust, however, for the following uses and purposes:

To manage and control said capital stock and out of the income therefrom, after deducting any expense incurred by them in connection with the administration of said trust, to pay in monthly payments to Leander S. Sherman during his lifetime the whole of said net income, and upon his death to pay one-half of said net income in monthly payments to Katie Sherman, during her lifetime, and during the life of Katie Sherman, out of the remaining one-half of said income, and after her death, out of the whole thereof, to pay to Filena T. Hyde and Flora M. Sherman, the sum of One Hundred and Fifty Dollars (\$150.00) a month each, during their respective lives, the balance of said remaining one-half of said income during the life of Katie Sherman, after deducting said payments to Filena T. Hyde and Flora M. Sherman, and the whole thereof, upon their death, shall be paid by

said trustees in monthly payments to Katie Sherman, Elsie Sherman Alco and Frederic R. Sherman, share and share alike.

Upon the death of said Katie Sherman, the income from said capital stock, after deducting said payments to Filena T. Hyde [20] and Flora M. Sherman, and the whole thereof, upon their death, shall be paid by said Trustees to Elsie Sherman Alco and Frederic R. Sherman, share and share alike.

If either of said last named persons, to-wit: Elsie Sherman Alco and Frederic R. Sherman should die leaving lawful issue, or lawful issue of such issue, then the share of said income of such person dying shall be paid in equal shares to the lawful issue of said decedent and to the lawful issue of any deceased child or children by right of representation. If either of said persons should die without leaving lawful issue or lawful issue of such issue, the income from said capital stock, after deducting said payments to Filena T. Hyde and Flora M. Sherman shall be paid to the survivor, or if the one so dying without leaving lawful issue, or lawful issue of such issue, is the survivor, said income shall be paid to the lawful issue and the lawful issue of any deceased child or children of the other of said persons by right of representation.

The Trust hereby created shall continue until the death of the survivor of said Filena T. Hyde, Flora M. Sherman, Katie Sherman, Elsie Sherman Alco and Frederic R. Sherman. Upon the death of the survivor of them, said capital stock shall go to and

vest in the lawful issue and the lawful issue of any deceased child or children then living of said Elsie Sherman Alco and Frederic R. Sherman, in the manner following: the lawful issue, and the lawful issue of any deceased child or children of each of said beneficiaries, Elsie Sherman Alco and Frederic R. Sherman, then living, shall constitute a class and said capital stock shall be divided into as many equal portions as there are such classes, and each portion of said capital [21] stock shall go to and vest in equal shares in the lawful issue and the lawful issue of any deceased child or children of said beneficiaries by right of representation in each class, respectively.

Said trustees, or the survivors of them, shall have the power and authority to appoint a successor to any trustee when a vacancy occurs by resignation, death or otherwise.

Upon the termination of this trust, the trustees, their survivors and successors, shall cause said capital stock to be divided in the shares or proportions herein provided, and shall deliver to the parties entitled to the same under the provisions of this trust certificates evidencing the number of shares of capital stock to which each person is so entitled.

IN WITNESS WHEREOF we have hereunto set our hands and seals this 1st day of September, 1921.

LEANDER S. SHERMAN

KATIE SHERMAN

State of California,
City and County of San Francisco.—ss.

On this 1st day of September in the year One Thousand Nine Hundred and twenty-one before me, MARIE FORMAN, a Notary Public in and for said City and County residing therein, duly commissioned and sworn, personally appeared LEANDER S. SHERMAN and KATIE SHERMAN, his wife, known to me to be the persons described in, those names are subscribed to, and who executed the within annexed instrument, and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my Office, in the said City and County of San Francisco, the day and year above written.

[Seal]

MARIE FORMAN

Notary Public in and for the City and County of
San Francisco, State of California. [22]

EXHIBIT "C"

KNOW ALL MEN BY THESE PRESENTS, That I, FREDERIC R. SHERMAN, have assigned, transferred, set over and conveyed, and do by these presents assign, transfer, set over and convey to EDNA FRANCES SHERMAN an undivided one-half ($\frac{1}{2}$) of all my right, title, interest, claim and demand in and to that certain trust created by

Leander S. Sherman and Katie Sherman, his wife,
dated September 1st, 1921.

DATED, San Francisco, February 11th, 1927.

F. R. SHERMAN [23]

EXHIBIT "D"

THIS AGREEMENT made and entered into
this 12th day of May, 1926, by and between FRED-
ERIC R. SHERMAN, party of the first part, and
EDNA FRANCES SHERMAN, party of the sec-
ond part,

WITNESSETH: Whereas the parties hereto are
husband and wife, and have three minor children,
namely, Mary Frances Sherman, Edna Sherman
and Clay Sherman; and

WHEREAS the party of the first part desires
to insure the future support and maintenance of
his said wife and children;

NOW THEREFORE, said party of the first
part, in consideration of the sum of One (\$1.00)
Dollar in hand paid, the receipt of which is hereby
acknowledged, and of the love and affection which
he has for his said family, and for the purpose of
insuring their future support and maintenance,
undertakes and agrees as follows:

Said first party agrees to and he does hereby
transfer and convey to said second party the fol-
lowing described parcels of real property situated
in the City of Oakland, County of Alameda, State
of California, to-wit:

Parcel 1: COMMENCING at a point on the northern line of Jayne Avenue distant thereon three hundred ten and $24/100$ (310.24) feet easterly from the point of intersection thereof with the eastern line of Lee Street; running thence easterly along said line of Jayne Avenue seventy (70) feet; thence at right angles northerly one hundred and twenty-five (125) feet; thence at right angles westerly seventy (70) feet and thence at right angles southerly one hundred and twenty-five (125) feet to the point of commencement.

Being the eastern 35 feet of Lot No. 20 and the western 35 feet of Lot No. 21 in Block No. 5 as laid down and delineated upon a certain map entitled "Subdivision No. 1 of Adams Point Property Oakland California 1897" filed January 12, 1898, in the office of the Recorder of Alameda County.

Parcel 2: Lot numbered thirty-three (33) as said lot is delineated and so designated upon that certain map entitled [24] "Map of Subdivision Sequoyah Hills Oakland California" as the same appears upon said map which is recorded in the Recorder's office of said County, in Book 28 of Maps, at pages 63 and 64.

Said first party agrees that he will assign, transfer and convey to said second party, and he does hereby assign, transfer and convey to her all furniture and furnishings, and all other personal prop-

erty of every kind and description now located at the home of said parties, No. 285 Jayne Avenue, Oakland, California, the same being located on the property described above as Parcel 1.

Said first party further agrees to assign, transfer and convey, and does hereby assign, transfer and convey to said second party that certain Buick sedan, Motor No. 1301087, 1925 model, now registered in the name of said first party.

Said first party further agrees that he will pay to said second party the sum of One Thousand (\$1000.00) Dollars per month for the support and maintenance of said second party and said minor children, beginning on the 1st day of June, 1926.

Said first party further agrees that he will transfer, assign and convey and he does hereby assign, transfer and convey to P. T. Clay, F. W. Stephenson and R. H. Cross all his right, title, interest, claim and demand of every kind and character in and to the estate of his father, Leander S. Sherman, now in the course of administration in the Superior Court of the State of California, in and for the City and County of San Francisco, in trust, however, to receive and collect the same and to invest and reinvest the same and to pay the income [25] therefrom to said first party during his lifetime and upon his death to convey to said Mary Frances Sherman, Edna Sherman and Clay Sherman said trust estate.

Said first party further agrees that he will as-

sign, transfer and convey to P. T. Clay, F. W. Stephenson and R. H. Cross all his right, title, interest, claim and demand in and to that certain trust created by Leander S. Sherman and Katie Sherman, his wife, dated September 1st, 1921, the same to be held by said transferees in trust for the same purposes and under the same conditions as the interest of said first party in the estate of said Leander S. Sherman, deceased, heretofore referred to.

Said first party agrees to make, execute, acknowledge and deliver to said second party any and all instruments or documents which may be necessary or requested by said second party to fully carry into effect each and all of the terms and provisions hereof.

Said first party agrees to pay as due, and to deliver to second party receipts therefor, the premiums on the life insurance policies this day assigned to said second party.

In event said second party should re-marry, said monthly payment of \$1000.00 shall be reduced to an amount which in the opinion of said second party would be sufficient and adequate for the support, maintenance, education and care of the children of the parties hereto.

IN WITNESS WHEREOF said parties have hereunto set their hands and seals this 12th day of May, 1926.

FREDERIC R. SHERMAN

EDNA FRANCES SHERMAN [26]

EXHIBIT "E"

THIS AGREEMENT, made and entered into the 11th day of February, 1927, by and between FREDERIC R. SHERMAN, party of the first part, and EDNA FRANCES SHERMAN, party of the second part.

WITNESSETH:

WHEREAS the parties hereto did on the 12th day of May, 1926, make and enter into an agreement of that date with reference to the proper future support and maintenance by said first party of said second party and the children of said parties; and

WHEREAS in and by that agreement it is provided as follows:

"Said first party further agrees that he will transfer, assign and convey and he does hereby assign, transfer and convey to P. T. Clay, F. W. Stephenson and R. H. Cross all his right, title, interest, claim and demand of every kind and character in and to the estate of his father, Leander S. Sherman, now in the course of administration in the Superior Court of the State of California, in and for the City and County of San Francisco, in trust, however, to receive and collect the same and to invest and reinvest the same and to pay the income therefrom to said first party during his lifetime and upon his death to convey to said Mary Frances Sherman, Edna Sherman and Clay Sherman said trust estate.

“Said first party agrees that he will assign, transfer and convey to P. T. Clay, F. W. Stephenson and R. H. Cross all his right, title, interest, claim and demand in and to that certain trust created by Leander S. Sherman and Katie Sherman, his wife, dated September 1st, 1921, the same to be held by said transferees in trust for the same purposes and under the same conditions as the interest of said first party in the estate of said Leander S. Sherman, deceased, heretofore referred to;”

and

WHEREAS the provisions of said paragraphs of said agreement of May 12, 1926, were never carried out or performed [27] by said first party, and whereas the parties hereto desire to change and modify that portion of said agreement, and

WHEREAS on or about the 12th day of May, 1926, said first party assigned and transferred to said second party several certain life and other insurance policies,

NOW THEREFORE, in lieu of the provisions of said paragraphs of said agreement above set forth, the parties hereto agree as follows:

Said first party agrees that he will assign, transfer and convey to said second party, Edna Frances Sherman, an undivided one-half ($\frac{1}{2}$) of all his right, title, interest, claim and demand in and to that certain trust created by Leander S. Sherman and Katie Sherman, his wife, dated September 1st, 1921, and will also assign, transfer and convey to

said second party an undivided one-half ($\frac{1}{2}$) of all his right, title, interest, claim and demand of every kind and character in and to the estate of his father, Leander S. Sherman, now in the course of administration in the Superior Court of the State of California, in and for the City and County of San Francisco.

It is further agreed that said first party shall have and receive all benefits derived or to be derived from or under said policies on account of accident, sick or disability provisions, and that upon the maturity of any of said policies which are an endowment policy the principal thereof shall be received and held by said second party in trust to invest the principal thereof to earn at least six per cent, and reinvest the same as may be deemed by her necessary, and to pay the whole income therefrom to said first party during his lifetime, [28] and upon his death said trust shall terminate and the principal pass free and clear thereof to said second party.

Except as herein modified, said agreement of May 12th, 1926, between the parties hereto shall remain in full force and effect.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

F. R. SHERMAN

EDNA FRANCES SHERMAN

[Endorsed]: United States Board of Tax Appeals.
Filed May 4, 1934. [29]

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed by the above named petitioner, admits and denies as follows:

I. Admits the allegation contained in Paragraph I of the petition.

II. Admits the allegation contained in Paragraph II of the petition.

III. Admits the allegation contained in Paragraph III of the petition.

IV (a) and (b). Denies error in the action recited in Paragraph IV(a) and (b) of the petition.

V(A) and (B). Denies each and every allegation of fact contained in Paragraph V(A) and (B) of the petition which is inconsistent with and contrary to the determination of the Commissioner as stated in the notice of final determination of deficiency dated March 7, 1932.

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified, or denied.

WHEREFORE, it is prayed that the petitioner's appeal be denied.

(Signed) C. M. CHAREST

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

MAXWELL M. MAHANY,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals.
Received Jun 7, 1932.

[Endorsed]: United States Board of Tax Appeals.
Filed Jun 7, 1932. [30]

[Title of Court and Cause.]

Docket No. 65593. Promulgated December 21, 1933.

An agreement which merely provides for the transfer of property from one spouse to the other upon separation does not destroy the marital community composed of the parties thereto.

E. D. Turner, Esq., for the petitioner.

E. A. Tonjes, Esq., for the respondent.

OPINION.

LANSDON: The respondent has determined a deficiency in income tax for the year 1929 in the amount of \$7,243.90. The issues pleaded by the petitioner are (1) that the respondent erred in computing her income from a certain trust in the taxable year, and (2) in determining that one half the salary of her husband is taxable to her. In his brief counsel for petitioner abandons the first issue. The parties have filed a stipulation which the Board has accepted and from which the material facts are summarized as follows:

The petitioner is, and for a long time prior to the taxable year, was the wife of Frederick Royal Sherman. Husband and wife are residents of San Francisco, California, but since

some time in 1926 have lived separately. On May 12, 1926, they entered into an agreement in which the husband agreed to transfer all his rights, title, and interest in certain real and personal property to the petitioner. The instrument evidencing such agreement specifies and describes all the assets to be transferred. It makes no mention of community property or community interests. In it there is no mention of income or of the right to receive income. This agreement was subsequently somewhat amended but the changes are not material to the issues here. In the taxable year the husband received a salary of \$22,500 and in his Federal income tax return included the whole amount thereof in his gross income. Upon audit the respondent determined that one half the husband's salary, or \$11,250, should be taxed to the wife and determined a refund in the amount of \$1,007.13. In her return for 1929 the petitioner reported no part of her husband's salary as income. Upon audit of such return the respondent added the amount of \$11,250 representing one half the husband's salary for the taxable year to petitioner's gross income, made other adjustments not now material here, and determined the deficiency under review.

The petitioner contends that the agreement of May 12, 1926, broke the community relationship which had theretofore existed between [31] herself

and her husband and that thereafter all income earned or otherwise received by either was separate property. To maintain this position her counsel argues that in California a husband and wife may enter into binding contracts with each other. This may be admitted without in anywise deciding or affecting the issue here. The contract in evidence does not specify that it is a full property settlement. After the transfers therein proposed were made there may have been left a considerable amount of community property. It contains no provisions that indicate the termination of the marital community. In it the wife nowhere waives her right to her vested interest in the salary of her husband under the laws of California as specifically set out in the Civil Code of California, 1931, at section 161 (a).¹ In *United States v. Malcolm*, 282 U. S. 792, the Supreme Court held that under such section the wife has an interest in community income which should be separately reported for income taxation.

Unless the agreement of May 12, 1926, destroyed the community, it is obvious that the respondent

¹Section 161. (a) *Interests in community property.* The respective interests of the husband and wife in community property during continuance of the marriage relations are present, existing and equal interests under the management and control of the husband as is provided in section 172 and 172a of the Civil Code. This section shall be construed as defining the respective interests and rights of husband and wife in community property.

must prevail here. If it was intended to be a waiver of the wife's right to a vested interest in community income, it must be held that it is ineffective for that purpose, since the Supreme Court has held, in *Lucas v. Earl*, 281 U. S. 111, that no anticipatory arrangement can be effective to shift tax liabilities in respect of community income. In the absence of any divorce petitioner and her husband constituted a marital community under the laws of California in 1929. If an interlocutory decree of divorce has been granted in California, the parties are still husband and wife until such decree becomes final, and if in the interim one dies the survivor has the same rights as if no such decree had been issued. *Estate of Leiter*, 164 Cal. 181; 128 Pac. 334; *Olson v. Superior Court*, 175 Cal. 250; 165 Pac. 706; *Brown v. Brown*, 170 Cal. 1; 147 Pac. 1168.

Since the agreement is not a waiver of community rights and the marital community in question survived through the taxable year, the determination of the respondent must be affirmed.

Decision will be entered for the respondent.

[Seal]

[32]

United States Board of Tax Appeals
Washington

Docket No. 65593.

MRS. EDNA SMART SHERMAN,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated December 21, 1933, it is

ORDERED and DECIDED: That there is a deficiency of \$7,243.90 for the year 1929.

[Seal]

(Signed) W. C. LANSDON

Member.

[Endorsed]: Entered Dec. 28, 1933. [33]

[Title of Court and Cause.]

PETITION FOR REVIEW OF DECISION OF
UNITED STATES BOARD OF TAX APPEALS

EDNA SMART SHERMAN, in support of this her petition, filed in pursuance of the provisions of Section 1001 of the Act of Congress entitled the Revenue Act of 1926, as amended by Section 1101 of the Act of Congress entitled the Revenue Act of 1932, for the review of the decision of the United States Board of Tax Appeals promulgated Decem-

ber 21, 1933 and entered December 28, 1933, approving a deficiency in income tax of the appellant for the calendar year 1929, in the amount of \$7,243.90, represents as follows:

I.

Nature of the Controversy

(1) On May 4, 1932, the appellant filed with the United States Board of Tax Appeals her petition requesting the redetermination of a deficiency in income tax for the calendar year 1929 [34] amounting to \$7,243.90, as shown by the final notice of deficiency mailed by the appellee under date of March 7, 1932. The petition alleged that the determination of tax set forth in the notice of deficiency was based upon the following errors:

(a) That the Commissioner erred in determining the income of the petitioner for the year 1929 from the Leander S. Sherman Trust;

(b) That the Commissioner erred in determining that one-half of the salary of the husband of the petitioner Frederic R. Sherman was taxable to the petitioner;

and set forth the facts upon which the petitioner relied, which were that the petitioner and Frederic R. Sherman were, and at all times during the taxable year 1929 had been, husband and wife; that each of them resided in the State of California during said year; that on or about the 12th day of May, 1926, petitioner and said Frederic R. Sherman did separate and thereupon, by instruments dated May 12, 1926 and February 11, 1927, respectively,

did make and enter into a separation agreement, wherein and whereby they did define and determine their rights and interest in and to all of the property of the husband, Frederic R. Sherman, both community and separate; that it was the intention of the petitioner and said Frederic R. Sherman, by said agreement, to terminate the community interest of the petitioner in and to any part of the earnings of said Frederic R. Sherman which he might thereafter have; that petitioner and said Frederic R. Sherman have lived separate and apart ever since said 12th day of May, 1926; that other than the sum of \$3,000.00 petitioner received no moneys or other property of any character or description from said Frederic R. Sherman during the taxable year 1929. [35]

(2) Thereafter the respondent filed with the said Board its answer to the said petition denying all of the material allegations of the petition except the identity and residence of the petitioner, the correctness of the notice of deficiency, its date of mailing and the nature and amount of the taxes in controversy, and the cause being at issue duly came on for hearing on September 29, 1933, in the City and County of San Francisco, State of California.

(3) That upon said hearing the petitioner abandoned the first ground of error assigned and relied solely upon the second assignment with respect to the inclusion of the one-half of her husband's salary in her taxable income, and the petitioner therein, Edna Smart Sherman, and the respondent therein, the Commissioner of Internal Revenue, entered into

a written stipulation which was accepted by said Board and filed with the Clerk thereof. That a copy of said stipulation is attached hereto and marked Exhibit "A".

That in addition, at the time of said hearing before the Board of Tax Appeals petitioner, being duly sworn as a witness, testified that it was the intention of petitioner and her husband in entering into their separation agreement to make a complete division of their property rights, terminating their community interest in any property then in existence and in the earnings and salaries of Frederic R. Sherman thereafter accruing; that it was orally stipulated at that time by counsel for the petitioner and respondent, respectively, that Frederic R. Sherman, the husband of the petitioner, would if placed upon the stand give similar testimony. The Board granted petitioner's request to file a brief and ordered that the respondent and petitioner file their briefs simultaneously by November 20, 1933; that on November 20, 1933, [36] petitioner filed said brief with the United States Board of Tax Appeals. On December 28, 1933, the said Board entered its final order of redetermination, approving the deficiency as determined by the respondent in the amount of \$7,243.90 for the year 1929, declaring that husband and wife could not, as a matter of law, by contract sever their community interest in the husband's future earnings so as to eliminate the wife's liability for a tax on one-half thereof.

II.

Designation of Court of Review

The petitioner is an inhabitant and resident of the State of California, residing therein at 285 Jayne Street, in the City of Oakland, and being aggrieved by the aforesaid decision and order of the Board desires that the same be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit.

III.

Assignment of Error

The petitioner, as a basis for review, makes the following assignment of error which she intends to argue:

1. That the Commissioner erred in determining that one-half of the salary of the husband of the petitioner Frederic R. Sherman for the year 1929 was taxable to the petitioner.

WHEREFORE, your petitioner prays that this Honorable Court may review said decision, opinion and order, and reverse and set aside the same, and that the Clerk of the said United States Board of Tax Appeals be directed to prepare, transmit and deliver to the Clerk of said court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for review and as required by the [37] rules of said court and statutes made and provided.

And your petitioner will ever pray.

EDNA SMART SHERMAN,

Petitioner.

E. D. TURNER, JR.,

Attorney for Petitioner.

State of California,
City and County of San Francisco—ss.

Edna Smart Sherman, being first duly sworn,
deposes and says:

That she is the petitioner named in the foregoing
petition; that she has read said petition and knows
the content thereof and that the same is true of her
own knowledge.

EDNA SMART SHERMAN

Subscribed and sworn to before me this 15th day
of March, 1934.

[Seal]

VIOLET NEUENBURG,
Notary Public in and for the City and
County of San Francisco, State of
California. [38]

[Title of Court and Cause.]

STIPULATION.

IT IS HEREBY STIPULATED by and be-
tween the parties hereto:

(1) That the petitioner EDNA SMART SHER-
MAN is an individual residing at 285 Jayne Street,
Oakland, California;

(2) That notice of deficiency (together with
the Revenue Auditor's report made a part thereof),
a copy of which is attached to the petition herein
and marked Exhibit "A", was mailed to petitioner
on the 7th day of March, 1932;

(3) That the taxes in controversy are income
taxes for the year 1929;

(4) That the petitioner and Frederic R. Sherman are and at all times during the taxable year 1929 were husband and wife; that each of them resided in the State of California during said year; that on or about the 12th day of May, 1926, petitioner and said Frederic R. Sherman did separate and thereupon, by instruments dated May 12, 1926, and February 11, 1927, [39] respectively, did make and enter into certain agreements, copies of which are attached to the petition on file herein and marked, respectively, Exhibits "D" and "E"; that pursuant to said agreements said Frederic R. Sherman, on or about the 11th day of February, 1927, did convey and transfer to your petitioner the real and personal property therein referred to, including an undivided one-half interest in said Leander S. Sherman Trust and did thereafter pay to your petitioner the monthly compensation of One Thousand (\$1,000) Dollars therein specified up to the calendar year 1929; that no stipulation is made with respect to the amount paid by said Frederic R. Sherman to your petitioner during the calendar year 1929, but evidence thereon may be submitted;

(5) That ever since said 12th day of May, 1926, petitioner and said Frederic R. Sherman have lived separate and apart; that Frederic R. Sherman for the calendar year 1929 reported the whole of his compensation and salary, in the sum of Twenty-Two Thousand Five Hundred (\$22,500.) Dollars as his taxable income for said year, and paid a tax thereon; that on or about February 2, 1932, said Frederic R.

Sherman was advised by the Internal Revenue Agent in Charge that an investigation of his income tax liability for the year 1929 resulted in an over assessment in the sum of One Thousand Seven and 13/100 (\$1,007.13) Dollars, and that the principal cause of said over-assessment was due to the elimination of Eleven Thousand Two Hundred and Fifty (\$11,250.) Dollars, being one-half of the amount reported as his salary. [40]

IN WITNESS WHEREOF, the parties hereto have caused this stipulation to be made and entered into this 28 day of Sept., 1933.

E. D. TURNER, JR.

Counsel for Petitioner

E. A. TONJES

Counsel for Respondent [41]

[Title of Court and Cause.]

STATEMENT OF THE EVIDENCE.

The above entitled cause came on for hearing before the Honorable W. C. Lansdon, member of the United States Board of Tax Appeals on the 29th day of September, 1933, there being present the petitioner, by her counsel E. D. Turner, Jr., and the respondent, by his counsel E. A. Tonjes.

I.

Prior to the introduction of testimony counsel for the petitioner presented a written stipulation signed by counsel for the respective parties, which

was accepted by the Board. Said stipulation stated:

(a) That the petitioner before the Board, Edna Smart Sherman, was an individual residing at 285 Jayne Street, Oakland, California;

(b) That notice of deficiency (together with the Revenue Auditor's report made a part thereof), a copy of which was attached [42] to the petition for hearing by the Board of Tax Appeals and marked Exhibit "A" thereof, was mailed to said petitioner on the 7th day of March, 1932;

(c) That the taxes in controversy were income taxes for the year 1929;

(d) That the said petitioner and Frederic R. Sherman were and at all times during the taxable year 1929 were husband and wife; that each of them resided in the State of California during said year; that on or about the 12th day of May, 1926, said petitioner and said Frederic R. Sherman did separate and thereupon, by instruments dated May 12, 1926, and February 11, 1927, respectively, did make and enter into certain agreements, copies of which were and are attached to the said petition for hearing before the Board of Tax Appeals and marked respectively, Exhibits "D" and "E" thereof (which exhibits are made a part of this statement by reference); that pursuant to said agreements said Frederic R. Sherman, on or about the 11th day of February, 1927, did convey and transfer to said petitioner the real and personal property therein referred to, including an undivided one-half interest in said Leander S. Sherman Trust and

did thereafter pay to said petitioner the monthly compensation of One Thousand (\$1,000.00) Dollars therein specified up to the calendar year 1929;

(e) That no stipulation was made with respect to the amount paid by said Frederic R. Sherman to said petitioner during the calendar year 1929, but evidence thereon might be submitted;

(f) That ever since the 12th day of May, 1926, said petitioner and said Frederic R. Sherman have lived separate and apart; that Frederic R. Sherman for the calendar year 1929 reported the whole of his compensation and salary, in the sum of Twenty-Two [43] Thousand Five Hundred (\$22,500.00) Dollars as his taxable income for said year, and paid a tax thereon; that on or about February 2, 1932, said Frederic R. Sherman was advised by the Internal Revenue Agent in charge that an investigation of his income tax liability for the year 1929 resulted in an over-assessment in the sum of One Thousand Seven and 13/100 (\$1,007.13) Dollars, and that the principal cause of said over-assessment was due to the elimination of Eleven Thousand Two Hundred and Fifty (\$11,250.00) Dollars, being one-half of the amount reported as his salary.

II.

In addition to filing the foregoing stipulation, said petitioner introduced the following testimony:

(a) Edna Smart Sherman, the petitioner before the Board, being first duly sworn, testified:

That she received from her husband during the year 1929 \$3,000.00. One thousand dollars

a month for each of the first three months of the year.

Counsel for the petitioner thereupon asked the following question:

“Q. Mrs. Sherman, when you entered into the contracts of May 12, 1926 and February 11, 1927, with your husband, F. R. Sherman, did you intend thereby to make a complete division of your property rights with Mr. Sherman, terminating your community interest in any property then existing and in his earnings and salary thereafter?”

The witness answered: “Yes, I did.”

Counsel for the respondent thereupon objected to the question and moved that the answer be stricken from the record for the reason that the contracts themselves are the best evidence to show what was accomplished. [44]

The Member ruled as follows:

“I think you may ask the question. I don't think it can have any effect. We will interpret the contract according to its terms. We have no choice in that matter.”

To that ruling the respondent noted an exception.

(b) It was stipulated orally by counsel for the respective parties that F. R. Sherman, the husband of said petitioner, if called as a witness, would give similar testimony with respect to his intention in executing the agreements of May 12, 1926 and February 11, 1927, as given by the petitioner, and

that the respondent would make the same objection to the question.

(c) Thereupon the respondent introduced in evidence the income tax return of the petitioner for the year 1929, and the income tax return of Frederic R. Sherman for the year, 1929, which were marked respectively, Respondent's Exhibits "A" and "B", and are attached hereto and made a part of this statement of evidence.

The foregoing is the substance of all the evidence adduced at the trial of said proceeding.

E. D. TURNER, JR.,
Attorney for the Appellant.
ROBERT H. JACKSON,
Attorney for Respondent.

The foregoing contains the substance of all evidence given at the hearing of this proceeding, and each of the exceptions stated to have been taken by the attorneys for the respective parties were so taken and were duly allowed and noted by the Board, and, in order that each and every one thereof may be preserved and made of record, this statement of the evidence is duly stated, approved and signed, and ordered to be made of record in the above entitled cause this 10 day of May, 1934.

(s) W. C. LANSDON,

Member [45]

EXHIBIT A.
(COPY)
TREASURY DEPARTMENT
Internal Revenue Service
San Francisco, Calif.

Office of the Collector
First District of California
March 14, 1930

Edna F. Sherman
285 Jayne Street
Oakland, California
Madam:

Receipt is acknowledged of your letter of recent date requesting, for the reasons therein given, extension of time within which to file your return of income for calendar year 1929.

PROVIDED A TENTATIVE RETURN IS FILED WITH THE COLLECTOR OF INTERNAL REVENUE FOR YOUR DISTRICT ON OR BEFORE MARCH 15, 1930 AND PAYMENT MADE AT THAT TIME OF AT LEAST ONE-FOURTH OF THE TOTAL ESTIMATED TAX SHOWN THEREON TO BE DUE, YOU are hereby granted an extension of time to May 15, 1930.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and

schedules shown on the form need not be filled in.

This letter, or a copy thereof, must be attached to both the tentative and completed returns as authority for the extension of time herein granted. The completed return when filed should be plainly marked "completed return."

Respectfully,

ROBT. H. LUCAS,

Commissioner.

By (signed) John P. McLaughlin,

Collector. [46]

GD

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1929

Do Not Write in These Spaces
File Code 1313
Serial Number
Contributor's Name

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

PART NAME AND ADDRESS PLAINLY BELOW

EDNA SMART SHEARAN
285 Jayde Street
Alameda California
Occupation: None

First Payment 223.41

- Are you a citizen or resident of the United States? Yes
- If you filed a return for 1928, to what Collector's office was it sent? SAN FRANCISCO
- In this joint return of husband and wife? No.
- State name of husband or wife if a Frederic Royal Sherman separate return was made and the Collector's office where it was sent. SAN FRANCISCO

6. Were you married and living with husband or wife on the last day of your taxable year? No

6. If not, were you on the last day of your taxable year supporting in your household one or more persons closely related to you? Yes

7. If your status in respect to questions 6 and 6 changed during the year, state date and nature of change. April 1, 1929

8. How many dependent persons (other than husband or wife) under 18 years of age or incapable of self-support were receiving their chief support from you on the last day of your taxable year? One

Item and Description	Amount received (except as indicated)	Amount paid (except as indicated)
INCOME		
1. Salaries, Wages, Commissions, etc. (State name and address of employer)		
2. Income from Business or Profession. (From Schedule A)		
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)	762.39	
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source	1,602.50	
5. Income from Partnerships. (State name and address)		
6. Income from Fiduciaries. (State name and address)	12,425.00	
7. Rents and Royalties. (From Schedule B)		
8. Profit from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)	2,262.08	
9. Dividends on Stock of Domestic Corporations	11,924.38	
10. Taxable Interest on Liberty Bonds, etc. (From Schedule B)		
11. Other Income (including dividends on stock of foreign corporations). (State exempt income)	300.00	
(a) <u>No other California Building & Loan Association \$600.</u>		
(b) <u>\$300. exempt</u>		
12. TOTAL INCOME IN ITEMS 1 TO 11		29,276.35
DEDUCTIONS		
13. Interest Paid	347.21	
14. Taxes Paid. (Explain in Schedule F)	428.58	
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)		
16. Bad Debts. (Explain in Schedule F)		
17. Contributions. (Explain in Schedule F)	299.00	
18. Other Deductions Authorized by Law. (Explain in Schedule F)	1,398.75	
19. TOTAL DEDUCTIONS IN ITEMS 13 TO 18		2,573.54
20. NET INCOME (Item 12 minus Item 19)		26,702.81

EARNED INCOME CREDIT		COMPUTATION OF TAX (See Instruction 29)	
21. Earned Income (not over \$30,000)	\$5,000.00	23. Net Income (Item 20 above)	\$26,702.81
22. Less Personal Exemption and Credit for Dependents	1,800.00	24. Less: Dividends (Item 9)	\$1,1924.38
23. Balance (Item 21 minus 22)	\$3,200.00	etc. (Item 10)	
24. Amount taxable at 1 1/2% (not over \$4,000)	\$3,200.00	30. Credit for Dependents	300.00
25. Amount taxable at 5% (not over \$4,000)	\$4,000.00	37. Personal Exemption	1,500.00
26. Amount taxable at 5% (balance over \$8,000 of Item 23)	\$1,600.00	39. Total of Items 34 to 37	\$1,3724.38
27. Normal Tax (1 1/2% of Item 24)	\$48.00	40. Balance (Item 33 minus 38)	\$1,2978.43
28. Normal Tax (5% of Item 25)	\$200.00	40. Amount taxable at 1 1/2% (not over \$4,000)	4000.00
29. Normal Tax (5% of Item 26)	\$80.00	41. Balance (Item 39 minus 40)	\$8978.43
30. Surtax on Item 21	\$0.00	42. Amount taxable at 5% (not over \$4,000)	4000.00
31. Tax on Earned Net Income (total of Items 27 to 30)	\$128.00	43. Amount taxable at 5% (Item 41 minus Item 42)	\$4978.43
32. Credit of 25% of Tax (not over 25% of Items 30, 41, 43, and 46)	\$32.00		
		44. Normal Tax (1 1/2% of Item 40)	\$39.73
		45. Normal Tax (5% of Item 43)	199.14
		46. Normal Tax (5% of Item 45)	629.20
		47. Surtax on Item 50 (see Instruction 23)	928.34
		48. Tax on Net Income (total of Items 44 to 47)	1,696.41
		49. Tax on Capital Gains or Losses (12 1/2% of Col. 8, Subcol. D)	
		50. Total of or difference between Items 48 and 49	1,696.41
		51. Less Credit of 25% of Tax on Earned Income (Item 32)	4.00
		52. Total Tax (Item 50 minus 51)	1,692.41
		53. Less Income Tax Paid at Source	32.04
		54. Income Tax paid to a foreign country or U. S. possession	
		55. Balance of Tax (Item 52 minus Items 53 and 54)	\$1,660.37

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me and to the best of my knowledge and belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

(If return is made by agent, the return therefore must be signed on this line)

Edna Smart Shearan
Signature of individual or agent

Sworn to and subscribed before me this 24 day of March, 1930.

NOTARIAL SEAL
Signature of officer administering oath

(Address of agent)
Signature of individual or agent

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable at par

[Printer's Note—The reverse of this Income Tax Return, not being filled out, is not reproduced in this printed record.]

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE,
STOCKS, BONDS, ETC.

1. Kind of Property	2. Date	3. Amt. Recd.	5. Cost	7. Net Profit
33 shs. John Bean Mfg. Co.	1928	\$ 1551.00	\$ 849.75	\$ 701.25
\$5000 Bonds Hearst Mag. Inc.	June, 1927	5088.33	5075.00	13.33
1000 shs. Borden Milk Co.	1929)	10228.75	9900.00	328.75
10 shs. Borden Milk Co.	1929)			
\$5000. Bonds, Mercantile Realty Co.	June, 1927	4878.47	4979.17	100.70
Frac. sh. warrant for 20/50 Byron Jackson stock				7.30
Frac. 10/15 sh. Borden stock at 96¼				64.15
200 shs. Borden Milk Co. at 97		19348.00	18000.00	1348.00
100 shs. Borden Milk Co. at 89		8900.00	9000.00	100.00
				\$2262.08
		49994.55	47803.92	
		Profit	2190.63	

SCHEDULE F—EXPLANATION OF DEDUC-
TIONS CLAIMED IN ITEMS 14, 17 and 18.

- (14) Taxes: Alameda Co. & Oakland, Cal. real and personal property taxes \$373.24; Tax on Buick Sedan, 24.66; Club dues, \$25.20, Stamp tax on stock transfers, \$5.48.
- (17) Contributions: Community Chest of Oakland \$300.00; Happyland Milk Fund, \$10.00; St. Paul's Chancel Chapter Benefit \$4.00; Grace Cathedral Bldg. Fund, \$50.00; Ladies Relief Society Benefit, \$5.00; Col. John Jacob Astor Post Benefit, \$5.00; Baby Hospital Benefit, \$2.00; Red Cross Tuberculosis Fund, \$10.00; British Great War Veterans' Relief Fund,

\$4.00; Berkeley School for Blind, \$5.00; Veterans' of Foreign Wars Relief Fund, \$4.00.

- (18) Commissions to Wm. Cavalier & Co., Brokers \$108.25; Safe deposit box rental \$15.00; Premium on bond as guardian of Clay Sherman, minor, \$10.00; attorney's fees, Cross & Brandt \$12.50; Automobile license fee \$3.00; Payment to John & Jane McCann to settle claim against income of trust estate, \$1250.00. [49]

(COPY)
TREASURY DEPARTMENT
Internal Revenue Service
San Francisco, Calif.

Office of the Collector
First District of California
March-14-1930.

Edna F. Sherman,
885 Jayne St.,
Oakland, Calif.

Sir:

Receipt is acknowledged of your letter of recent date requesting, for the reasons therein given, extension of time within which to file your return of income for calendar year 1929.

PROVIDED A TENTATIVE RETURN IS FILED WITH THE COLLECTOR OF INTERNAL REVENUE FOR YOUR DISTRICT ON OR BEFORE MARCH 15, 1930 AND PAYMENT MADE AT THAT TIME OF AT LEAST ONE-FOURTH OF THE TOTAL ESTIMATED TAX SHOWN THEREON TO BE DUE, YOU are hereby granted an extension of time to May 15, 1930.

Any deficiency in the first installment of tax will bear interest at the rate of one-half of one per cent a month from the original due date.

By a "tentative return" is meant a return on the appropriate income tax form, showing only the name and address of the taxpayer and the estimated amount, if any, of the tax due. The items and schedules shown on the form need not be filled in.

This letter, or a copy thereof, must be attached to both the tentative and completed returns as authority for the extension of time herein granted. The completed return when filed should be plainly marked "completed return."

Respectfully,

ROBT. H. LUCAS,

Commissioner.

By (signed) John P. McLaughlin,

GD

Collector. [52]

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN \$5,000
AND INCOMES FROM BUSINESS, PROFESSION, REVENTS, OR SALE OF PROPERTY

For Calendar Year 1929

Do Not Write in These Spaces

File Code **1314**

Serial Number **3102459**

Collector's Number

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1930

PREPARED AND ADDRESS PLAINLY BELOW

NAME **FREDERIC ROYAL SHEPMAN** (Name)

Address **Bohemian Club** (Street and number, or rural route)

San Francisco (City)

California (State)

Occupation _____

First Payment _____

36908

- Are you a citizen of the United States? **Yes**
- If you filed a return for 1928, to what Collector's office was it sent? **San Francisco**
- Is this a joint return of husband and wife? **No**
- State name of husband or wife if a separate return was made and the Collector's office where it was sent. **Edna Smart Sherman San Francisco**

INCOME

1. Salaries, Wages, Commissions, etc. (State name and address of employer) **Shepman, Clay & Co. \$22,500.00**

- Income from Business or Profession. (From Schedule A)
- Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except interest on tax-free covenant bonds)
- Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source
- Income from Partnerships. (State name and address)
- Income from Fiduciaries. (State name and address) **L. S. Sherman Trust**
- Patents and Royalties. (From Schedule B)
- Profits from Sale of Real Estate, Stocks, Bonds, etc. (From Schedule C)
- Dividends on Stock of Domestic Corporations
- Taxable Interest on Liberty Bonds, etc. (From Schedule E)
- Other Income (including dividends on stock of foreign corporations). (From Schedule F)

(a) **22,500.00**

(b) **500.00**

- TOTAL INCOME IN ITEMS 1 TO 11 **23,000.00**
- DEDUCTIONS
- Interest Paid **100.30**
- Taxes Paid. (Explain in Schedule F) **144.40**
- Losses by Fire, Storm, etc. (Explain in Table at foot of page 2)
- Bad Debts. (Explain in Schedule F)
- Contributions. (Explain in Schedule F)
- Other Deductions Authorized by Law. (Explain in Schedule F)
- TOTAL DEDUCTIONS IN ITEMS 12 TO 18 **244.70**
- NET INCOME (Item 12 minus Item 19) **22,755.30**

EARNED INCOME CREDIT		COMPUTATION OF TAX (See Instructions 52)	
21. Earned Income (not over \$50,000)	22,755.30	33.13	60
22. Less Personal Exemption and Credit for Dependents	1,900.00	11.67	61
23. Balance (Item 21 minus 22)	20,855.30	40.00	62
24. Amount taxable at 1 1/2% (not over \$4,000)	4,000.00	1.50	63
25. Amount taxable at 3% (not over \$4,000)	4,000.00	12.57	64
26. Amount taxable at 5% (balance over \$8,000 of Item 23)	12,855.30	19.55	65
27. Normal Tax (1 1/2% of Item 24)	300.00	4.00	66
28. Normal Tax (3% of Item 25)	120.00	15.55	67
29. Normal Tax (5% of Item 26)	642.53	4.00	68
30. Surtax on Item 21	320.00	15.55	69
31. Tax on Earned Net Income (total of Items 27 to 30)	992.53	4.00	70
32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45, and 46)	223.13	11.55	71
		1.50	72
		15.55	73
		4.00	74
		15.55	75
		4.00	76
		15.55	77
		4.00	78
		15.55	79
		4.00	80
		15.55	81
		4.00	82
		15.55	83
		4.00	84
		15.55	85
		4.00	86
		15.55	87
		4.00	88
		15.55	89
		4.00	90
		15.55	91
		4.00	92
		15.55	93
		4.00	94
		15.55	95
		4.00	96
		15.55	97
		4.00	98
		15.55	99
		4.00	100

I swear (or affirm) that this return, including the accompanying schedule and statements, has been examined by me, and to the best of my belief, is a true and complete return made in good faith for the taxable year stated, pursuant to the Revenue Act of 1928 and the Regulations issued thereunder.

Sworn to and subscribed before me this **14** day of **March**, 1930.

Notary Public **F. P. Sherman** (Signature of individual administering oath)

Address of agent **Bohemian Club** (Address of agent)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable to F. P. Cal

SCHEDULE A—INCOME FROM BUSINESS OR PROFESSION (See Instruction 3)

1. Total receipts from business or profession (state kind of business) Cost of Goods Sold	
2. Labor	
3. Material and supplies	
4. Merchandise bought for sale	
5. Other costs (itemize below or on separate sheet)	
6. Plus inventory at beginning of year	
7. Totals (Lines 2 to 6)	
8. Less inventory at end of year	
9. Net Cost or Goods Sold (Line 7 minus Line 8)	
Enter "C," "O" or "M," on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.	
Explanation of deductions claimed on Lines 6 and 16	

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1914, Whichever is Greater	4. Depreciation Allowable Since Acquisition	5. Balance	6. Gross Expenses (Itemize below)	7. Net Proceeds (Enter as Item 7)

Explanation of deductions claimed in Column 6

SCHEDULE C—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Depreciation Allowable Since Acquisition	5. Cost or Value as of March 1, 1914, Whichever is Greater	6. Subsequent Improvements, and Capital Improvements	7. Net Proceeds (Enter as Item 7)
190 Shares Sherman, Clay & Co Prior Preferred	1929	8 705 70		8 091 64		614 06 204 69

State how property was acquired
Taxpayer's Share 1/3

SCHEDULE D—CAPITAL NET GAIN OR LOSS FROM SALE OF ASSETS HELD MORE THAN TWO YEARS (See Instruction 9)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Received	5. Depreciation Allowable Since Acquisition	6. Cost or Value as of March 1, 1914, Whichever is Greater	7. Subsequent Improvements, and Capital Improvements	8. Net Gain or Loss (Enter as Item 8)
State how property was acquired							

State how property was acquired

SCHEDULE E—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 10)

1. Description of Securities	2. Interest Received or Accrued	3. Amount Owed	4. Federal Amount Exempt From Taxation	5. Amount Owed in Excess of Exemption (Enter as Item 5)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	XXXXXX XX
(b) Securities issued under Federal Farm Loan Act or as Amended, and Certificates of Indebtedness issued after June 17, 1929			All	XXXXXX XX
(c) Liberty 3 1/2% Bonds and other obligations of United States issued on or before September 1, 1917, and obligations of U. S. possessions			All	XXXXXX XX
(d) Liberty 4% and 4 1/4% Bonds, Certificates of Indebtedness issued before June 16, 1928, Treasury Bonds and Savings Certificates.		\$5,000	\$5,000	XXXXXX XX
(e) Treasury Notes		None	None	

SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

Tax on Club Dues \$44.40
Contribution-Community Chest \$100.00

PREPARED BY
SKINNER & HAMMOND
CERTIFIED PUBLIC ACCOUNTANTS
HUNTER DULIN BUILDING
San Francisco

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If building, state material of which constructed)	2. Date Acquired	3. Age When Acquired	4. Probable Life After Acquisition	5. Cost or Value as of March 1, 1914, Whichever is Greater	6. Previous year	7. This year

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A, AND IN ITEM 18

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1914, Whichever is Greater	4. Subsequent Improvements	5. Depreciation Allowable Since Acquisition	6. Insurance and Salvage Value	7. Deductible Loss

[Endorsed]: United States Board of Tax Appeals. Lodged May 9, 1934.

[Endorsed]: United States Board of Tax Appeals. Filed May 10, 1934.

[Title of Court and Cause.]

PRAECIPE FOR THE RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days from the date of the filing of the petition for review in the above stated case, transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit certified copies of the following documents:

- (1) The docket entries of proceedings before the United States Board of Tax Appeals;
- (2) Pleadings before the Board;
- (3) Opinion, and decision of the Board;
- (4) Petition for review;
- (5) Statement of the evidence taken before the Board; and (6) this Praecipe:

The foregoing to be prepared, certified, and transmitted as required by law and the rules of the United States Circuit Court [55] of Appeals for the Ninth Circuit.

Dated: San Francisco, California, May 2, 1934.

E. D. TURNER, JR.,

Attorney for Appellant.

[Endorsed]: United States Board of Tax Appeals. Filed May 9, 1934. [56]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 56, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 17th day of May, 1934.

[Seal]

B. D. GAMBLE,

Clerk,

United States Board of Tax Appeals.

[Endorsed]: No. 7483. United States Circuit Court of Appeals for the Ninth Circuit. Edna Smart Sherman, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed May 21, 1934.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.